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Letter dated 15 July 2013 from the Permanent Representative of Iraq to the United Nations and the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Secretary-General

The Governments of the State of Kuwait and the Republic of Iraq,

Mindful of the purposes and principles of the Charter of the United Nations, the principles of international law and, in particular, the principles of mutual respect for independence and equal sovereignty, territorial integrity, the promotion of friendly relations and non-interference in internal affairs; desirous of developing bilateral relations for the benefit of their two kindred countries; and acting in accordance with Article 102 of the Charter of the United Nations, have the honour to deposit a copy of the memorandum of understanding concluded on 28 May 2013 between the Ministry of Foreign Affairs of the State of Kuwait and the Ministry of Foreign Affairs of the Republic of Iraq concerning the financing of a project to build a housing complex in Umm Qasr.

We should be grateful if the present letter and its annex could be circulated as a document of the Security Council.

On behalf of the Government of the State of Kuwait:

(*Signed*) Abdulaziz S M A **AlJarallah**
Chargé d'affaires a.i.
First Secretary at the Permanent Mission of the State of Kuwait
to the United Nations

On behalf of the Government of Iraq:

(*Signed*) Mohamed Ali **Alhakim**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of the Republic of Iraq to the United Nations

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Annex to the letter dated 15 July 2013 from the Permanent Representative of Iraq to the United Nations and the Chargé d'affaires a.i. of the Permanent Mission of Kuwait to the United Nations addressed to the Secretary-General

Memorandum of Understanding between the Ministry of Foreign Affairs of the State of Kuwait and Ministry of Foreign Affairs of the Republic of Iraq concerning the financing of a project to build a housing complex in Umm Qasr

With a view to strengthening the close historical ties between the State of Kuwait and the Republic of Iraq and in affirmation of the belief of the State of Kuwait in the need to support ongoing efforts to rebuild Iraq, the Government of the State of Kuwait, pursuant to resolution No. 868 adopted at meeting No. 40-3/2012 of the Council of Ministers, held on 6 August 2012, has approved the allocation of the sum of $80,000,000 (eighty million United States dollars) to finance a project to build a housing complex to replace the houses in the area of Umm Qasr that are adjacent to the boundary line between the State of Kuwait and the Republic of Iraq, in preparation for the removal of those houses following completion of the construction of the aforementioned complex in implementation of the recommendations of the United Nations team concerning the maintenance of the boundary markers to remove all obstacles on both sides of the border.

Whereas the Government of the State of Kuwait has charged the Kuwait Fund for Arab Economic Development (hereinafter referred to as "the Fund") with the management and utilization of the sum allocated for the financing of the above-mentioned project and with monitoring the implementation thereof, and the Iraqi Government has agreed to the Fund assuming responsibility for execution of the project,

Accordingly, the two parties have agreed on the following:

Article 1

The preamble appearing at the beginning of the present Memorandum and the schedules annexed thereto shall be deemed to be integral parts thereof, and shall be interpreted and applied on that basis.

Article 2: Definitions

The following terms shall have the meaning respectively indicated following each term, unless context dictates otherwise:

1. "Government" shall mean the Government of the Republic of Iraq;

2. "Fund" shall mean the Kuwait Fund for Arab Economic Development;

3. "Project" shall mean the project for which the funds have been allocated and is described in detail in schedule 1, annexed to the present Memorandum of Understanding, or as this description may be amended from time to time by agreement between the Fund and the Ministry of Construction and Housing of the Republic of Iraq in its capacity as representative of the Government;

4. "Goods" shall mean the materials, equipment, machinery, tools, works and services required to implement the project. The price of goods shall always include the costs of their importation to Iraq;

5. "The Ministry of Construction and Housing" (hereinafter referred to as "the Beneficiary") shall mean the ministry benefiting from the project being financed by the funds allocated for that purpose, or any entity that takes its place by decree of the Government.

Article 3

The Government undertakes to allocate houses built by the project to current residents of Umm Qasr in place of their current residences near the demarcation line and to clear the area described in schedule 2 as soon as the current residents have received the new houses.

Article 4: Amount and use of funds

1. The Government agrees that the allocated sum of $80,000,000 (eighty million United States dollars) shall be used to finance a project for the construction of housing complex consisting of 228 residential units at Umm Qasr in the Republic of Iraq, including infrastructure and public utilities for the complex, in accordance with the terms and conditions stipulated in the present Memorandum.

2. The aforementioned sum shall be used to finance the project and, specifically, to finance the goods (works and services) itemized in the list of goods appearing in schedule 3 annexed to the present Memorandum, up to the limit of the amount allocated for each item. The project or aforementioned list of goods may be amended by agreement between the Fund and the Beneficiary.

3. The totality of aforementioned sum shall be expended in United States dollars. The United States dollar shall be the currency of accounts and means of payment in respect of all matters relating to use of the sum allocated for the project. The Fund may, however, make payment in other currencies in accordance with project needs, whereby the dollar equivalent of such payments shall be deemed to have been withdrawn from the balance of the sum, at the prevailing market rate of exchange.

4. The Fund shall be responsible for managing and utilizing the sum to finance the project and shall endeavour to monitor project execution. It shall act on behalf of the Government of the State of Kuwait in all such matters and represent it in all matters relating to application of the present Memorandum of understanding in respect of project financing and execution. The Fund shall manage and make use of the sum in accordance with its regulation and customary practice. In the performance of its duties, it shall exercise all necessary powers and authority to manage the sum and achieve the desired goals.

5. The Fund shall take measures to secure the goods, works and services required to execute the project in accordance with its standard rules and procedures for procurement.

6. The expertise of consulting engineers or other experts, in accordance with project needs, that are acceptable to the Fund shall be relied on in the execution of the project. Their duties and the conditions under which the may be used shall be specified in consultancy service contracts.

7. With due regard to paragraphs 4 and 5 above and the procedures stipulated in the present Memorandum, all contracts for the execution of project work shall be awarded by competitive tender, unless the Fund and the Beneficiary agree otherwise. The consulting engineers contracted to provide needed project consultancy services shall be chosen on the basis of a request for proposals circulated by the Fund to a number of Kuwaiti consultancy firms. The Fund shall then choose one or more of those firms to provide the required consultancy services. The consultants chosen may choose to partner with consultants who are Iraqi nationals.

8. The Government shall be responsible for taking all necessary measures at the site to execute the project, including inter alia, arranging for the issuance of required work permits, handing over the various sites and ensuring that sites are safe.

9. The Government shall undertake to take all the requisite measures to exempt the goods and services necessary to execute the work financed by the sum from all duties and taxes that may be imposed under the laws of the Republic of Iraq. Furthermore, all non-Iraqi contractors and staff involved in the execution of the project shall be exempt from all duties and taxes imposed in the Republic of Iraq.

Article 5: Withdrawal from and use of the sum

1. Withdrawals shall be made from the sum on the basis of payment requests for amounts due to contractors and suppliers prepared by the consultants charged with providing the requisite consultancy services for the project or works financed by the sum. Payment requests shall be approved by the Beneficiary after they have been verified by the Fund and the supporting documentation examined. The Fund shall check and verify amounts due to the contractors, in accordance with the terms of the contract or contracts for consultancy services concluded with these consultants. The Fund shall confirm the amount, authorize payment and then notify the Beneficiary accordingly.

2. The Fund shall pay amounts rightfully due to contractors and suppliers from the balance of the sum on the basis of the payment requests referred to in the previous paragraph. Payment shall be made either to them or as they direct. The Fund shall pay amounts due to consultants on the basis of invoices submitted by them after these have been checked in accordance with paragraph 1 above.

3. The Beneficiary undertakes to use the goods obtained in order to execute the project financed by the sum and for no other purpose whatsoever.

Article 6: Provisions pertaining to execution of the project and management of the sum

1. In managing and utilizing the sum and monitoring project execution, the Fund shall at all times communicate and exchange information with the Beneficiary in respect of matters relating to the management and utilization of the sum.

2. In the event of there being reason to believe that there is an unexpected increase in project costs and that the sum allocated to the project is insufficient to meet this increase, the Government shall take the necessary measures, including requesting additional financing from the Fund, to meet the increase.

3. The Fund and the Beneficiary shall, in consultation and coordination with one another, take the necessary measures to prepare all the studies, designs, specifications and implementation plans pertaining to the project. They shall also make, without delay, any amendments required in the future.

4. The Government shall, at an appropriate time in the course of the execution of the project and in a manner that avoids delaying the project, acquire ownership of any lands or rights to land that may be needed to execute the project.

5. Limited tenders for execution of project work shall be invited on the basis of tender documentation agreed by the Fund and the Beneficiary. Contractors classified by the Kuwait Central Tenders Committee as capable of executing construction work with a high-level engineering component may participate in these tenders in partnership with Iraqi contractors. In evaluating the offers, the project-appointed consultants shall take into consideration the contractor's ability or familiarity with the technical aspects and whether it is financially capable of executing the project.

6. In view of the urgent nature of the project, the Government undertakes to make the necessary effort to provide all requisite facilities and assistance to the representatives of the Fund and the consultants and contractors engaged to execute the project, so as to facilitate their work and help them perform in the optimal manner the duties and work with which they have been charged to achieve project goals.

7. The Government shall, through the agency of the Beneficiary, monitor the progress of work in executing the project and works financed by the sum. It shall work in coordination with the Beneficiary to overcome any administrative obstacles or on-site problems. Without prejudice to the generality of the foregoing, the Government shall undertake to hand over the project site to the contractor free from any legal encumbrances or third-party rights. The Government shall connect utilities (water, electricity, sewerage) up to the site boundary and shall connect telephone lines to the site.

8. The consultant charged with supervising project execution shall be required to present periodic reports to the Fund and the Beneficiary on the progress of project execution, as well as a final report upon completion of the project components. As far as possible, the Fund shall keep the Beneficiary informed of significant issues relating to project execution.

9. The Fund and the Beneficiary shall collaborate closely to ensure that project goals are achieved. To that end, the parties shall provide one another with the information and data that may be reasonably requested on the progress of project execution.

10. The sum allocated for the project may not be used in any way whatsoever to cover any duties or taxes imposed under the laws of the Republic of Iraq or that are applied in its territory.

11. Both parties undertake to exercise due diligence in executing the project and work financed by the sum in a timely manner, so that full advantage may be taken of the residential units and the service buildings, such as schools and shopping centres, and infrastructure.

12. The Government shall take the measures necessary to ensure that the Ministry of Construction and Housing, either directly or indirectly, determines the needs of

the housing complex for workers with various levels of specialization, including administrators and technicians needed to operate and manage project service buildings and installations after handover. The Ministry shall formulate an integrated plan to provide a proper and appropriate level of staff to meet work demands and achieve project goals.

Article 7: Miscellaneous provisions

1. All claims and notifications sent by one of the parties to the present Memorandum to the other concerning the provisions or application of the Memorandum must be in writing. All claims and notifications sent by the Fund or the Beneficiary to the other concerning the provisions or application of the present Memorandum must be in writing. A claim shall be deemed to have been presented and a notification to have been legally made by the mere act of delivery by hand, fax, post or e-mail to the party to whom it is directed or to his address as stated in the schedule annexed to the present Memorandum or to any other address of which the other party has been notified.

2. The Government, represented by the Ministry of Construction and Housing, shall provide the Fund with all official documents stating the powers and authority of the person or persons who, on behalf of the Government, shall take any measure or sign any document in application of the present Memorandum, together with a specimen of the signature of each person.

3. The Minister of Construction and Housing or any person acting on his behalf pursuant to official written authorization shall represent the Government in taking any measures that may or must be taken pursuant to the present Memorandum and in signing any documents that must be signed in application thereof. With the exception of amendments to the project, the Fund and the Beneficiary may perform the foregoing as stipulated in the present Memorandum. Amendments to the present Memorandum shall be made by means of a further memorandum of understanding concluded between the Ministry of Foreign Affairs of the State of Kuwait and the Ministry of Foreign Affairs of the Republic of Iraq.

Article 8: Deposit of the Memorandum of Understanding

A copy of the present Memorandum of Understanding shall be deposited with the United Nations, in accordance with Article 102 of the Charter.

Article 9: Entry into force and termination of the Memorandum of Understanding

1. The present Memorandum of Understanding shall enter into force on the date on which it is signed.

2. It shall remain in effect until both parties have fulfilled their obligations pursuant to its provisions.

Article 10: Settlement of disputes arising from application of the Memorandum

Any disagreement over implementation of the clauses of the present Memorandum shall be settled by means of bilateral consultations and negotiations and through diplomatic channels.

This Memorandum was signed on 28 May 2013 in Kuwait by the legally authorized representatives of the two parties in two Arabic language copies, both of which shall be deemed to be a single document.

(*Signed*) Sabah Khalid Al Hamad **Al Sabah**
Deputy Prime Minister and Minister of Foreign Affairs
of the State of Kuwait

(*Signed*) Hoshyar **Zebari**
Minister for Foreign Affairs of the Republic of Iraq

Schedule 1

Project description

Construction of a new housing complex in the city of Umm Qasr that shall include 228 residential units, a mosque, primary school, secondary school, clinic, commercial centre, police station and administrative building. The project shall include infrastructure and public utilities.

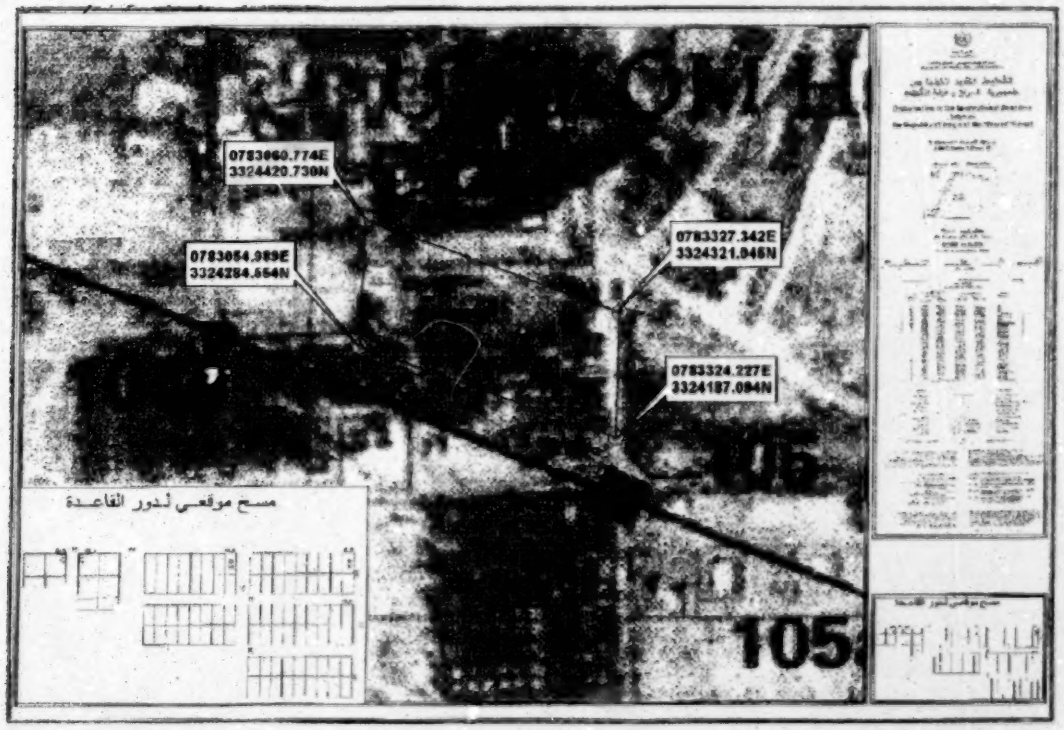
The project shall include the following elements:

1. Building works, including the construction of 228 two-storey residential units with an area of 168 m^2; a two-storey mosque with an area of approximately 650 m^2; a two-storey primary school with an area of approximately 2,550 m^2; a three-storey secondary school with an area of approximately 2,650 m^2; a single-storey police station with an area of approximately 460 m^2; and a single-storey administrative building with an area of approximately 270 m^2, in addition to the commercial centre.

2. Infrastructure works, including roads inside the complex, together with road signs and lighting, a sewerage system, a rainwater drainage network, a drinking water network, an irrigation network, greenery and site beautification works and perimeter fencing.

3. Public utilities, including a groundwater tank with a capacity of 5,000 m^3, a 13kV backup generator, a 500-line telephone exchange, a wastewater treatment unit with a capacity of 15,000 m^3 and a raw water collection tank with a capacity of 10,000 m^3.

Schedule 2



Schedule 3

List of financed goods

Item	*Funds allocated (United States dollars)*	*Proportion of cost of item*
1. Buildings, infrastructure and utilities	75 000 000	100%
2. Consultancy services	1 000 000	100%
3. Reserve	4 000 000	-
Total		

Schedule 4

The following addresses are designated pursuant to article 6, paragraph 1:

Address of the Ministry of Construction and Housing:

Ministry of Construction and Housing
Baghdad
Republic of Iraq
PO Box:
Fax:
E-mail:

Address of the Fund:

Kuwait Fund for Arab Economic Development
PO Box 2921, Safat
Kuwait 13030
State of Kuwait
Fax: 965 22999091
965 22999191
Website: http://www.kuwait-fund.org
E-mail: operations@kuwait-fund.org